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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,523	03/15/2004	Robert L. Sutherland	7214	3206

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT PAPER NUMBER

3728

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,523	<b>Applicant(s)</b> SUTHERLAND ET AL.	
	<b>Examiner</b> Steven B. Pollicoff	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19,21-24 and 28-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19,21-24 and 28-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/25/05 &amp; 6/15/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species II (drawn to claims 1-19,21-24 and 28-41) in the reply filed on 12/22/2005 is acknowledged.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: See reference numbers 71A-C and 160A-B in Fig. 7B. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-19,21-24 and 28-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1,6,11,31 and 35 recite the limitation "the extension cut" under paragraph (c) on the last line. Claims 16,22,28 and 38 recite the limitation "the extension cut" under paragraph (c) on line 13. There is insufficient antecedent basis for this limitation in the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1,2,6-8,11-17,21-23,28,29,31,32,35,36,38,39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (US Pat No 5,485,915).

As to claims 1,6,11,16,22,28,31,35 and 38, Harris discloses all the limitations of claim 1 except that Harris does not disclose that the secondary cut line (Fig 3, reference

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number 58) has a center that is significantly further from the terminal edge (Fig 3, bottom of blank) of the inner flap (Fig 3, reference number 46) than the rest of the cut line or that the fold line (Fig 3, see dotted line below cut line 58) is arcuate shaped having a center closer to the terminal edge. However, it would have been an obvious matter of design choice to one of ordinary skill in the art to modify and have the secondary cut line's center significantly further from the terminal edge (i.e. V-shaped with apex being further from terminal edge) of the inner flap, since applicant has not disclosed that by doing so serves any purpose other than to assist in enabling the locking system to lie flat. Since Harris discloses a secondary cut line that allows the locking system to also lie flat (Fig. 2; Column 4, lines 30-38) without the requirement that the center of the cut line be further from the terminal edge than the rest of the cut line, applicant has not disclosed that that feature solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a uniform secondary cut line where the center is not necessarily further from the terminal edge than the remainder of the cut line. As to the arcuate shaped fold line, it would have been an obvious matter of design choice to one of ordinary skill in the art to modify and have the fold line arcuate shaped since such a modification would have involved a mere change in the shape of the component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). The shape here (inasmuch as applicant discloses) seems ornamental in function with no apparent improvement over the carrier fold lines of Harris.

As to claims 2,8,17,23,29,32,36 and 39, while Harris does not disclose that the extension cuts turn and project towards the terminal edge of the inner flap, it would have been an obvious matter of design choice to one of ordinary skill in the art to modify and have the extension cuts project towards the terminal edge of the inner flap, since applicant has not disclosed that having the cuts positioned in that manner solves any stated problem (other than what is already well known in the art that extension cuts prevent cuts from tearing under the stress when interacting with another locking component) or is for any particular purpose and it appears that the invention would perform equally well with the extension cut disclosed in Harris that projects away from the terminal edge of the inner flap (Harris Column 3, lines 9-17). Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the positioning of the extension cut towards the terminal edge of the inner flap (instead of away from the edge), since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to claim 7, Harris discloses that when the carrier is loaded, each primary male lock is engaged with a lock ledge formed by a primary female opening and the shoulder of each secondary male lock is engaged with a secondary locking ledge, thereby securing the articles in the carrier (Column 3, lines 5-17).

As to claims 12 and 13, Harris discloses that the carrier has at least two sets of primary male locks (Harris Fig 3, reference number 50) and corresponding primary lock ledges (reference number 56) as well as secondary male locks (reference number 52) and secondary locking ledges (reference number 58).

As to claims 14 and 15, Harris discloses a carrier that can carry at least one row of containers (Harris Fig 1).

As to claims 21 and 41, Harris discloses that the containers can be bottles or cans (Harris Fig 1; Column 4 lines 47-50).

6. Claims 3,4,5,9,10,18,19,24,30,33,34,37 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (US Pat No 5,485,915) as applied to claims 1,6,7,16,22,28,29,31,35 and 38 above and further in view of Oliff (US Pat No 5,941,453).

As to claims 3,9,18,24,30,33,37 and 40 Harris does not disclose that each secondary female opening has a slit that extends from the secondary cut line near each end of the fold line in a direction away from the terminal edge. However Oliff discloses a secondary female opening (Oliff Fig 2, reference number 58) that has a slit (reference numbers 50) that extends from a secondary cut line (reference number 54) near each end of the fold line (reference number 62) in a direction away from the terminal edge (Fig 1 at upper most boundary of the blank shown) to help the lock (Fig 2, reference number 40) from becoming disengaged (Column 4, lines 59-62). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the secondary cut line of Harris to include the slits, as taught by Oliff, to further prevent disengagement of the locking system.

As to claims 4,5,10,19 and 34 Harris as modified above discloses that each neck of the secondary male lock (Harris Fig 3, reference number 52) has two edges with the distance between the edges of the neck being less than the distance between the slits

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with the neck of the secondary male lock located in the secondary female opening between the slits (Column 3, lines 5-17). Harris also discloses that when the carrier is loaded, each primary male lock is engaged with a lock ledge formed by a primary female opening and the shoulder of each secondary male lock is engaged with a secondary locking ledge, thereby securing the articles in the carrier (Column 3, lines 5-17).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ganz et al., (US Pat No 4,925,019) discloses an article carrier with primary and secondary locks. Muller (US Pat No 6,158,586) discloses another article carrier similar to Harris and Ganz.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

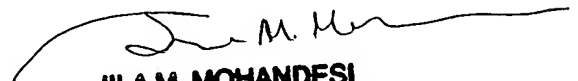
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**JILA M. MOHANDESI**  
**PRIMARY EXAMINER**